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FILED

08 FEB -8 PM 4: 26

ANDERSON LAW FIRM
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

"

DEPUTY

Attorneys for Plaintiff Alonso Menchaca

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALONSO MENCHACA,

Plaintiff,

v.

GENERAL MOTORS
CORPORATION,

Defendant.

Case No. **08 CV 0252 L RBB**

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff alleges as follows:

JURISDICTION

1. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.00. Plaintiff is citizen of the state of California. Defendant General Motors Corporation is a corporation that is organized and existing under the laws of the state of Delaware and having its principal place of business in the state of Michigan.

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ORIGINAL

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PARTIES

2. As used in this Complaint, the word "Plaintiff" shall refer to Plaintiff Alonso Menchaca.

3. As used in this Complaint, the word "Defendant" shall refer to all Defendants named in this Complaint.

**FIRST CLAIM FOR RELIEF
BY PLAINTIFF AGAINST DEFENDANT
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
CAL. CIV. CODE § 1794**

4. On or about November 24, 2006, Plaintiff purchased a 2007 GMC Yukon, 1GKFC13J57R257287 (hereafter "Vehicle") which was manufactured, distributed, or sold by Defendant. The total consideration which Plaintiff paid or agreed to pay, including taxes, license, and finance charges is \$49,130.00. The Vehicle was purchased primarily for personal, family, or household purposes. Plaintiff purchased the Vehicle from a person or entity engaged in the business of manufacturing, distributing, or selling consumer goods at retail.

5. In connection with the purchase, Plaintiff received an express written warranty in which Defendant undertook to preserve or maintain the utility or performance of the Vehicle or to provide compensation if there is a failure in utility or performance for a specified period of time. The warranty provided, in relevant part, that in the event a defect developed with the Vehicle during the warranty period, Plaintiff could deliver the Vehicle for repair services to Defendant's representative and the Vehicle would be repaired.

6. During the warranty period, the Vehicle contained or developed defects which cause the vehicle to be unable to start, and defects with the fuel system, electrical system, fuel gauge, brakes, sound system, and sunroof.

7. Pursuant to Civil Code §§ 1792 and 1791.1, the sale of the Vehicle was accompanied by Defendant's implied warranty of merchantability. The

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1 duration of the implied warranty is coextensive in duration with the duration of the
2 express written warranty provided by Defendant.

3 8. The implied warranty of merchantability means and includes that the
4 Vehicle will comply with each of the following requirements: (1) The Vehicle will
5 pass without objection in the trade under the contract description; (2) The Vehicle
6 is fit for the ordinary purposes for which such goods are used; (3) The Vehicle is
7 adequately contained, packaged, and labeled; and (4) The Vehicle will conform to
8 the promises or affirmations of fact made on the container or label.

9 9. On or about November 24, 2006, or during the time period in which
10 the implied warranty was in effect, the Vehicle contained or developed the defects
11 stated in paragraph 6, above. The existence of each of these defects constitutes a
12 breach of the implied warranty because the Vehicle (1) does not pass without
13 objection in the trade under the contract description, (2) is not fit for the ordinary
14 purposes for which such goods are used, (3) is not adequately contained, packaged,
15 and labeled, and (4) does not conform to the promises or affirmations of fact made
16 on the container or label.

17 10. Plaintiff has rightfully rejected and/or justifiably revoked acceptance
18 of the Vehicle, and has exercised a right to cancel the sale. By serving this
19 Complaint, Plaintiff does so again. Accordingly, Plaintiff seeks the remedies
20 provided in California Civil Code section 1794(b)(1), including the entire purchase
21 price. In addition, Plaintiff seeks the remedies set forth in California Civil Code
22 section 1794(b)(2), including the diminution in value of the Vehicle resulting from
23 its defects. Plaintiff believes that, at the present time, the Vehicle's value is *de*
24 *minimis*.

25 11. Plaintiff has been damaged by Defendant's failure to comply with its
26 obligations under the implied warranty, and therefore brings this claim pursuant to
27 Civil Code § 1794.
28

SECOND CLAIM FOR RELIEF
BY PLAINTIFF AGAINST DEFENDANT
BREACH OF THE IMPLIED WARRANTY OF FITNESS
CAL. CIV. CODE § 1794

12. Plaintiff incorporates by reference the allegations contained in paragraphs 4 through 6 and paragraph 10, above.

13. Defendant is a manufacturer, distributor, or seller who had reason to know at the time of the retail sale that the Vehicle was required for a particular purpose and that the Plaintiff was relying on the Defendant's skill or judgment to select or furnish suitable goods.

14. Pursuant to Civil Code § 1792.1, the sale of the Vehicle was accompanied by Defendant's implied warranty that the Vehicle would be fit for Plaintiff's particular purpose. The duration of the implied warranty is coextensive in duration with the duration of the express written warranty provided by Defendant.

15. On or about November 24, 2006, or during the time period in which the implied warranty was in effect, the Vehicle contained or developed the defects stated in paragraph 6, above. The existence of each of these defects constitutes a breach of the implied warranty because the Vehicle is not fit for Plaintiff's particular purpose.

16. Plaintiff has been damaged by Defendant's failure to comply with its obligations under the implied warranty, and therefore brings this claim pursuant to Civil Code § 1794.

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THIRD CLAIM FOR RELIEF
BY PLAINTIFF AGAINST DEFENDANT
BREACH OF EXPRESS WARRANTY
CAL. CIV. CODE § 1794

17. Plaintiff incorporates by reference the allegations contained in paragraphs 4 through 6 and paragraph 10, above.

18. In accordance with Defendant's warranty, Plaintiff delivered the Vehicle to Defendant's representative in this state to perform warranty repairs. Plaintiff did so within a reasonable time. Each time Plaintiff delivered the Vehicle, Plaintiff notified Defendant and its representative of the characteristics of the defects. However, the representative failed to repair the Vehicle, breaching the terms of the written warranty on each occasion.

19. Plaintiff has been damaged by Defendant's failure to comply with its obligations under the express warranty, and therefore brings this claim pursuant to Civil Code § 1794.

20. Defendant's failure to comply with its obligations under the express warranty was willful, in that Defendant and its representative were aware of their obligation to repair the Vehicle under the express warranty, but they intentionally declined to fulfill that obligation. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil Code § 1794(c).

FOURTH CLAIM FOR RELIEF
BY PLAINTIFF AGAINST DEFENDANT
FAILURE TO PROMPTLY REPURCHASE PRODUCT
CAL. CIV. CODE § 1793.2(d)

21. Plaintiff incorporates by reference the allegations contained in paragraphs 4 through 6, above.

22. Defendant and its representatives in this state have been unable to service or repair the Vehicle to conform to the applicable express warranties after a

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1 reasonable number of attempts. Despite this fact, Defendant failed to promptly
2 replace the Vehicle or make restitution to Plaintiff as required by Civil Code §§
3 1793.2(d) and 1793.1(a)(2).

4 23. Plaintiff has been damaged by Defendant's failure to comply with its
5 obligations pursuant to Civil Code §§ 1793.2(d) and 1793.1(a)(2), and therefore
6 brings this claim pursuant to § 1794.

7 24. Defendant's failure to comply with its obligations under § 1793.2(d)
8 was willful, in that Defendant and its representative were aware that they were
9 unable to service or repair the Vehicle to conform to the applicable express
10 warranties after a reasonable number of repair attempts, yet Defendant failed and
11 refused to promptly replace the Vehicle or make restitution despite Plaintiff's
12 demand. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's
13 actual damages pursuant to § 1794(c).

14 25. Defendant does not maintain a qualified third-party dispute resolution
15 process which substantially complies with § 1793.22. Despite Defendant's
16 violation of § 1793.2(d) and its notice thereof, Defendant failed to comply with its
17 obligations within a reasonable time. Accordingly, Plaintiff is entitled to a civil
18 penalty of two times Plaintiff's actual damages pursuant to Civil Code § 1794(e).

19 26. Plaintiff seeks civil penalties pursuant to § 1794, subdivisions (c) and
20 (e) in the alternative and does not seek to cumulate civil penalties, as provided in §
21 1794(f).

22 **FIFTH CLAIM FOR RELIEF**
23 **BY PLAINTIFF AGAINST DEFENDANT**
24 **FAILURE TO COMMENCE REPAIRS WITHIN A REASONABLE TIME**
25 **AND TO COMPLETE THEM WITHIN 30 DAYS**
26 **CAL. CIV. CODE § 1794**

27 27. Plaintiff incorporates by reference the allegations contained in
28 paragraphs 4 through 6 and paragraph 10, above.

1 7. And for such other relief as the Court may deem proper.

2 DATED: February 1, 2008

3 ANDERSON LAW FIRM
4 MARTIN W. ANDERSON
5 MICHAEL E. LINDSEY

6
7 By: 
8 MARTIN W. ANDERSON
9 Attorneys for Plaintiff Alonso Menchaca

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial on all causes of action asserted herein.

12 DATED: February 1, 2008

13 ANDERSON LAW FIRM
14 MARTIN W. ANDERSON
15 MICHAEL E. LINDSEY

16 By: 
17 MARTIN W. ANDERSON
18 Attorneys for Plaintiff Alonso Menchaca
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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147438 - BH

**February 08, 2008
16:34:17**

Civ Fil Non-Pris

USAO #.: 08CV0252 CIVIL FILING

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CK

Check#.: BC# 1139

Total-> \$350.00

FROM: MENCHACA V. GENERAL MOTORS
CIVIL FILING

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ALONSO MENCHACA

FEB 08 2008
DEFENDANTS

GENERAL MOTORS CORPORATION
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) County of Residence of First Listed Plaintiff Los Angeles County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of Defendant DEPUTY (not a US Pltf case)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Anderson Law Firm, 2070 N. Tustin Ave., Santa Ana, CA 92705
Tel: (714) 516-2700

Attorneys (If Known)

08 CV 0252 L RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:
Consumer Warranty Action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 197,390.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/01/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 147458AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL